

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Shizuo Akira et al.

Group Art Unit: 1632

Serial No.: 10/088,567

Examiner: Anoop Kumar Singh

Filed: March 19, 2002

Confirmation No. 3078

For: Transgenic Toll-Like Receptor 9 (TLR9) Mice

PETITION FOR CORRECTION OF PATENT TERM ADJUSTMENT

UNDER 37 C.F.R. § 1.705(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This letter is to request correction of the Patent Term Adjustment under Rule 705. Specifically, the Patent Term Adjustment calculation included with the USPTO communication of August 22, 2008 omits the period of adjustment under Rule 703(b). The \$200 fee required by Rule 18(e) is authorized herewith. This application is not subject to a terminal disclaimer.

Pursuant to Rule 703(b), the Office is to grant a patent term adjustment for the number of days that exceeds 36 months from the filing date of the application to the issue date of the application, excluding

- 1) the period following the filing of an RCE,
- 2) (i) following the declaration of an interference,
(ii) the period of suspension of prosecution due to an interference,
- 3) the period the application is under seal, and
- 4) the period of appeal.

Where a notice of appeal is filed, the period of adjustment under this paragraph “restarts” upon the mailing of a notice of allowance (See Rule 703(b)(4)). The calculation of periods for Patent Term Adjustment follows.

Calculation of Periods for Patent Term Adjustment

Under Rule 703(a)

Applicants agree with the USPTO determination that the PTO incurred 1134 days delay under 703(a) for the period beginning 14 months from filing (*i.e.*, May 19, 2003) until the mailing of a Restriction Requirement on June 26, 2006.

Under Rule 703(b)

The application was filed on March 19, 2002, and the period exceeding 36 months begins March 19, 2005. A Notice of Appeal was filed on March 12, 2008. The period from March 19, 2005 until March 12, 2008 is 1089 days.

A Notice of Allowance was mailed on May 8, 2008, restarting the period under Rule 703(b). An RCE was filed on June 24, 2008. The period from May 8, 2008 until June 24, 2008 is 47 days.

Thus, the total period of USPTO delay under Rule 703(b) is 1136 days (1089 days plus 47 days).

Reduction Under Rule 704

The USPTO has found 95 days of Applicant delay.

Period of Patent Term Adjustment

The period for patent term adjustment should be the sum of non-overlapping days under Rules 703(a) and 703(b) minus the days of Applicant delay.

In Form PTOL-85, mailed August 22, 2008, the USPTO calculated that the Applicants are entitled to 1039 days of patent term adjustment. In the "Patent Term Adjustment" tab in the official image file wrapper (Private-PAIR) for this application, the USPTO does not include a value for the USPTO's delay under Rule 703(b).

The correct calculation of patent term adjustment should include a value for Rule 703(b). Applicants believe that in this case the delays under Rules 703(a) and 703(b) are only partially overlapping. Specifically, the overlap in delays under Rules 703(a) and 703(b) occurs from March 19, 2005 until June 26, 2006, a period of 464 days.

Therefore, Applicants are entitled to the sum of 703(a) delay (1134 days) plus 703(b) delay (1136 days) minus overlap (464 days) and minus the period of Applicant delay (95 days), for a total of 1711 days of Patent Term Adjustment.

Summary of Requested Correction to PTA

The patent term adjustment of 1039 days according to USPTO Form PTOL-85, mailed August 22, 2008, is incorrect because it does not include delays under Rule 703(b), as calculated above according to the plain language of the statute.

Applicants request that the patent term adjustment be corrected to add a total of 1711 rather than 1039 days of term.

AUTHORIZATION

The Commissioner is hereby authorized to charge the fee set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. **50-3732**, Order No. 14119.105010. The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this communication to Deposit Account No. **50-3732**, Order No. 14119.105010. In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **50-3732**, Order No. 14119.105010.

Respectfully submitted,
King & Spalding, LLP

Dated: October 1, 2008

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